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09/543,764	04/05/2000	John L. Howes		6749

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Peter Gibson #307
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EXAMINER

ZURITA, JAMES H

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 07/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/543,764

Applicant(s)

HOWES, JOHN L.

Examiner

James Zurita

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) Claims 1-4, 6-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) Claims 1-4, 6-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Prosecution History

Applicant filed his application on 5 April 2000, claiming priority to provisional application 60/157840, filed 6 October 1999.

Along with the application, Applicant filed a petition for Accelerated Examination to make the application special (paper # 2).

The petition was found to be deficient in several aspects and was denied on 24 October 2000 (paper # 3).

Applicant corrected the deficiencies and requested reconsideration on 7 December 2000 (paper # 4). The petition was granted on 30 January 2001 (paper # 5).

A first Office action of 15 January 2002 (paper # 6) rejected claims 1-34 under 35 U.S.C. 103. The Office action also rejected claims 1-6, 10, 16, 21, 22, 28, 29 and 34 under 35 U.S.C. 112.

Applicant filed amendment A on 16 April 2002 (paper # 7), attempting to overcome the various rejections. Applicant cancelled claim 5 and corrected claims 1-4, 6, 10, 16, 24 and 34. However, the amendment was defective and contained errors. Notwithstanding the errors, the Examiner felt that applicant's amendment appeared to be a bona fide reply.

In a letter dated 28 June 2002 (paper # 8) the Examiner notified applicant's counsel of the errors and granted an additional month to submit an amendment in compliance with 37 CFR 1.121 in order to avoid abandonment.

Applicant filed amendment A on 17 July 2002 (paper # 9), correcting errors.

A second office action of 23 October 2002 (paper # 10) rejected claims 1-4 and 6-34 under 35 U.S.C. 103.

Applicant submitted a petition on 3 December 2002 (paper # 11). The petition was dismissed on 22 January 2003 (paper # 12).

The present Office Action is a response to applicant's request for reconsideration of 4 December 2002 (paper # 13).

Notes concerning Appeal

Applicant argues that Examiner has abrogated his rights with regard to appeal.

In response to this argument, the Examiner respectfully submits that applicant's right to appeal have not been abrogated since applicant has so far chosen *to not* exercise his rights to appeal. Should applicant wish to exercise his rights to appeal, see MPEP 1205, which states in part:

MPEP 1205 Notice of Appeal

35 U.S.C. 134 Appeal to the Board of Patent Appeals and Interferences.

(a) PATENT APPLICANT. An applicant for a patent, any of whose claims has been *twice rejected*, may appeal from the decision of the administrative patent judge to the Board of Patent Appeals and Interferences, having once paid the fee for such appeal.

Under 37 CFR 1.191(a), an applicant for a patent dissatisfied with the primary examiner's decision in *the second* or final rejection of his or her claims may appeal to the Board for review of the examiner's rejection by filing a notice of appeal and the required fee set forth in 37 CFR 1.17(b) within the time period provided under 37 CFR 1.134 and 1.136. A notice of appeal may be filed after any of the claims has been twice rejected, regardless of whether the claim(s) has/have been finally rejected. (emphasis added)

Response to Applicant's Request for Reconsideration

Applicant's statements concerning the interview of 3 April 2002 and alleged errors in the various Office Actions raise issues that are the subject of the petition filed 3 December 2002. Petitioned matters will not be addressed in this Office Action.

This Office Action will address issues directly relating to the merits of the case.

Claims 1-4, 6-34 are pending and will be examined.

Response to Arguments

Applicant's arguments with respect to claims 1-4 and 6-34 have been fully considered but they are not persuasive.

Claim 1 reads, in part:

A business method for the direct supply for containerized liquid coating product inclusive of a plurality of particular, custom, colors by a supplier remote from a customer, said business method comprising the steps of

placing by at least one customer of a customer order directly with a remote supplier specifying customer order information including indication of at least one liquid coating base, a color, a quantity, delivery address and identification of the customer;

entering...order information...;

compiling ...order information...to yield production parameters;

operating...a production line...in observance of ...production parameters...;

assembling ...product[s] resulting from [...] production line...;

transporting...assembled product...fulfilling [the] customer order;

whereby each...consumer obtains delivery of [the] product..."

The Examiner respectfully notes that applicant appears only to disagree with the rejection of four of claim 1's limitations. The following section responds to applicant's arguments concerning placing, operating, assembling and transporting. A later section addresses applicant's arguments concerning the references.

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Placing

Applicant argues that prior art does not disclose, teach or suggest

placing ... of a customer order directly with a remote supplier specifying ... at least one liquid coating base, a color, a quantity, delivery address and identification of the customer' because while the prior art discloses placing a customer order directly with a remote supplier, (Distributor Roles), the prior art is restricted in its disclosure in this regard by the *lack of any mention of liquid coatings* and hence the prior art can not teach or suggest specifying 'liquid coating base' in placing such an order;

The Examiner respectfully submits that prior art meets the claimed limitation of **placing** [a customer order] where prior art discloses, suggests or teaches that customer order information "...including indication of *at least one* liquid coating base, a color, a quantity, delivery address and identification of the customer." The Examiner notes the open-ended language "...including..." "...at least one ..."

Distributor Roles contains at least the following language that meets the open-ended claim limitations and indicate *at least one* [liquid coating base, a color, a quantity, delivery address and identification of the customer]. Emphasis and notes are added.

- The order would be transmitted immediately to the distributor, which could quick-ship it either to the store or the customer's home [*delivery address*].
- Eventually, as computer-savvy customers got accustomed to the system, they would start to ask if they could access the retailer's ordering system without coming into the store. The retailers would give the *customers a password* [*identify a customer*], coded to credit their store with the sale of an order placed electronically.
- Costs are taken out of the chain by this "virtual warehousing" approach. Less staff and warehousing space would be needed as orders are taken electronically and shipped directly [*delivery address*] from manufacturers to customers [*delivery address, identify a customer*].
- Indeed, a rudimentary form of virtual warehousing -- drop-shipment [*delivery address, identify a customer*] from manufacturer to either the store or to an end user, usually a professional customer, on behalf of the distributor -- has long been a reality for the industry's five largest dealer-owned hard-lines co-ops, which did 41 percent of their business through these orders in 1997.
- The delivery challenge is greater for building materials distributors than for hardlines wholesalers, which are increasingly using UPS overnight shipping [*delivery address, identify a customer*]. When it comes to bulky [*quantity or size*], difficult-to-ship commodities, there appears to be no

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technological substitute for being located within overnight-delivery range of customers [*delivery address, identify a customer*].

Therefore, applicant's argument concerning the claim limitation is not persuasive.

Operating

Applicant argues that prior art does not disclose, teach or suggest

operating, ... a containerized liquid coating production line capable of producing a plurality of particular, custom, color containerized liquid coatings with ... the addition of colorant to liquid coating base'

because while the prior art discloses the availability of particular, custom, color containerized liquid coatings, (*Lowe's Superstores, Colonial Restoration*), a 'production line capable of producing' these custom coatings is wholly unknown in the prior art and hence there is no possibility of teaching or suggesting the operating of any production line inclusive of '*the addition of colorant to liquid coating base*' in order to produce custom color liquid coatings, '

The Examiner respectfully submits that applicant's statement is misleading for several reasons.

The claim limitation "operating..." accepts *production parameters* from a production subsystem. Those parameters are based on customer order information input into a computer.¹ The claim limitation include is directed to *comparing precisions* possible in alternate production schemes according to production parameters obtained from customer orders. The claim language states, in part:

- ...operating, in observance of said *production parameters* yielded by said production subsystem, a containerized liquid coating production line capable of producing a plurality of particular, custom, color containerized liquid coatings with a ***precision in the addition of colorant to liquid coating base exceeding the precision*** readily obtainable by a conventional local retailer... (emphasis added)

¹ See "...placing..." discussion for information that may be included in a customer order.

Both schemes produce "...a plurality of custom, color containerized liquid coatings..." with different precisions. Applicant seeks to have his invention exceed the precision "...readily available by a conventional local retailer..." The Examiner respectfully submits that prior art meets the claim limitation where the precision of a remote facility or manufacturer exceeds the precision readily obtainable by a conventional local retailer.

The Examiner respectfully submits that one of ordinary skill in the art at the time the invention was made would have known that the precision of a production subsystem (of remote suppliers or manufacturers) may exceed the precision obtainable by a local retailer. Applicant has not argued or shown otherwise.²

Therefore, applicant's argument concerning the claim limitation is not persuasive.

² In fact, the Examiner respectfully notes that applicant concedes that the *precision* of a production subsystem of a remote supplier/manufacturer exceeds the precision obtainable by a local retailer, and that one of ordinary skill in the art would have known this at the time the invention was made. For example:

"...And it is also considered that as *colorant* is *added* to the *base* in the *paint can* by the retailer ***there is a considerable margin of error...***" (specifications, page 3).

For the manufacturer of paint the base is comprised of liquid binder and liquid solvent to which colorant is added to achieve a standard color with a given type of base, e.g. water or oil, flat or gloss. For the local retailer the standard color paint available from the manufacturer is effectively a base to which additional colorants must be added in order to achieve approximation of the precise color specified by a customer. (page 6)

In this regard it is first recognized that the colorant dispensing apparatus utilized by a manufacturer is ***generally more accurate, more precise,*** and more efficient of labor than the colorant dispensing apparatus available to local retailers. (Specifications, page 12.)

The fact that the ***remote*** supplier of the liquid covering product is *adding* all the *colorants* required of particular, non-standard, color paint means that a ***precision*** in ***mixing*** such colors greater than that known in conventional paints customized by a local ***retailer*** are readily obtained. (page 16)

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Assembling

Applicant argues that prior art does not disclose, teach or suggest

assembling containerized liquid coating product resulting from said production line fulfilling at least one individual customer order and packaging the resulting assemblage as required for shipment

because the prior art does not disclose, suggest, or teach either 'said production line' or a customer order placed directly with a remote supplier specifying 'liquid coating base'; (p. 21)

In response to these arguments, the Examiner respectfully submits that the limitation is directed to "...assembling ...and packaging..." products that resulted from a production line to fulfill a customer order. See "...placing..." discussion, above, for claim limitations concerning customer order information and language concerning shipments. Products are normally assembled and packaged prior to shipment.

Therefore, applicant's argument concerning the claim limitation is not persuasive.

Transporting

Applicant argues that prior art does not disclose, teach or suggest

transporting ... containerized liquid coating product fulfilling each said customer order to the delivery address specified by the consumer in placing the customer order'

because the prior art does not disclose placing customer orders 'directly with a remote supplier' for 'containerized liquid coating product' and hence cannot teach or suggest transporting such product to a 'delivery address specified by the consumer in placing the customer order (p. 21)

In response to these arguments, the Examiner respectfully submits that

Distributor Roles discloses transporting products to a delivery address specified by a customer in placing the customer order.

The following section addresses applicant's arguments concerning references.

The examiner respectfully recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found *either in the references themselves or in the knowledge generally available to one of ordinary skill in the art*. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, *Distributor Roles*, *Lowe's Superstores* and *Colonial Restoration* are combined with knowledge generally known to one of ordinary skill in the art at the time the invention was made.

A "traverse" is a denial of an opposing party's allegations of fact.³ The Examiner respectfully submits that applicants' arguments and comments do not appear to traverse what Examiner regards as knowledge that *would have* been generally available to one of ordinary skill in the art at the time the invention was made. Even if one were to interpret applicants' arguments and comments as constituting a traverse, applicants' arguments and comments do not appear to constitute an adequate traverse because applicant has not specifically pointed out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. 27 CFR 1.104(d)(2), MPEP 707.07(a). An adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner's notice of

³ Definition of Traverse, Black's Law Dictionary, "In common law pleading, a traverse signifies a denial."

what is well known to one of ordinary skill in the art. *In re Boon*, 439 F.2d 724, 728, 169 USPQ 231, 234 (CCPA1971).

Applicant argues that the examiner's conclusion of obviousness is based upon improper hindsight reasoning (page 23, section D4). In response to this argument, the Examiner again respectfully submits that it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account *only knowledge which was within the level of ordinary skill at the time the claimed invention was made*, and does not include knowledge gleaned *only* from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In this case, for example, the Examiner notes that the following *does not include knowledge gleaned only* from the applicant's disclosure. The Examiner respectfully submits that the knowledge was within the level of ordinary skill at the time the claimed invention was made:

- Hardware stores and home improvement retailers sell many types of products, including liquid coatings.
- Home improvement products include liquid coating products.
- Liquid coating products, like other liquids, require containerization.
- Containers may be produced from various materials, including metal and plastic.

The Examiner respectfully submits that Applicant has not argued or shown that the above statements were *not* considered to be common knowledge or well-known in the art at the time the invention was made.

Applicant characterizes a number of Examiner's statements as "speculations" but fails to provide any evidence. As noted in previous office actions, to be of probative value, any objective evidence should be supported by actual proof. The arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965). Examples of attorney statements which are not evidence and which must be supported by an appropriate affidavit or declaration include statements regarding unexpected results, commercial success, solution of a long-felt need, inoperability of the *prior art*, invention before the date of the reference, and allegations that the author(s) of the *prior art* derived the disclosed subject matter from the applicant. See MPEP 716.01(c).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Examiner cites particular text of the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

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The Examiner will take this opportunity to further elaborate on the rejection and to further clarify the record. The Examiner respectfully notes that the grounds for rejection are unchanged and prior art references remain the same. The Examiner also notes that he is elaborating so that applicants may more easily identify particular features that disclose their invention. The features that disclose their invention may be found in the references *and* knowledge generally available to those of ordinary skill in the art at the time their invention was made.

Claims 1-4, 6-34 are rejected under 35 U.S.C. 103(a). See groups below:

- Claims 1-4, 6 over Distributor Roles in view of Lowe's Superstore.
- Claims 7-10 over Distributor Roles in view of Lowe's Superstore.
- Claims 11-16 over Distributor Roles in view of Lowe's Superstore.
- Claims 21, 22, 26-28 over Distributor Roles in view of Lowe's Superstore.
- Claims 29-34 over Distributor Roles in view of Lowe's Superstore and further in view of Colonial Restoration.

Claims 1-4, 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over a publication entitled *Web Ordering May Alter Role of Distributors*, published by National Home Center News, v. 24, n. 10, p. 23-25, on June 22, 1998, by Carol Tice (*Distributor Roles*), in view of an article entitled *Lowe's Launches New Superstore in N.E. Dallas, TX* (hereinafter *Lowe's Superstore*), published on 10 February 1998 on PR Newswire.

As per claim 1, *Distributor Roles* discloses electronic business methods where customers may order customized products from a supplier who may ship the products directly to customers. The steps disclosed include:

- *placing* by at least one consumer of a customer order directly with a remote supplier specifying customer order information;
- *entering* customer order information into a customer order subsystem comprised of software maintained on a computer;
- *compiling* customer order information with a computer and processing the results of this compilation with a production subsystem to yield production parameters;
- *operating* a production line, in observance of production parameters yielded by the production subsystem;
- *assembling* containerized product resulting from the production line fulfilling at least one individual customer order and packaging the resulting assemblage as required for shipment;
- *transporting* each assemblage of product fulfilling each customer order to the delivery address specified by the consumer in placing the customer order;
- *whereby* each said consumer obtains delivery of product directly to a specified address.

In *Distributor Roles*, See at least page 3, *The future that's already here*, describing placing orders for home improvement products, including customized products, entering customer order information into a customer order subsystem comprised of software maintained on a computer. See also at least references to special order, page 2, paragraph 8. For operating a production line, see at least page 3, line 2, which describes product assembly. See also at least page 3, paragraph 4, describing drop-shipments. See also at least page 4, *Delivering the Goods*. See

rejection of claims 21, 22, 26-28 for discussion of integration of customer order, production and other sub-systems in client/server environments.⁴

Customers may order home improvement products on the Internet, by entering data and product details (page 3, paragraph 12). See at least page 3, paragraph 5, which describes that even the bulkiest home improvement products may be ordered and ultimately delivered. See also at least page 3, paragraph 1, which describes that orders may be taken electronically and that products may be shipped directly from manufacturers to consumers. *Distributor Roles* also describes that orders may be processed for many product lines (page 2, paragraph 10) of many manufacturers.

Containerized liquid coating products (as in claim 1) require *containerization*. Liquid products may include adhesives, cleaning fluids, colorants, disinfectants, epoxy resins, lubricating oils, paints, pesticides, plumbing supplies, sealants, shellacs, soaps, stains, varnishes, etc. Containers may be produced from various materials, including glass (e.g. for hydrochloric acid and other corrosive fluids), metals (e.g., canned pineapple juice, paint, beans), rubberized fabric (as in camping canteens), molded plastic (e.g., as in orange juice containers, detergents, paint, bottled water), hybrid containers (e.g., plastic-covered metals for soft drinks, plastic-coated cartons such as used for milk, orange juice, etc.) as well as expansible molded plastic containers such as for carrying water on a camping trip. The various types of containers have different levels of expansibility: from the molded materials themselves, or built-in, such as with a bellows-type arrangement, or such as one finds in a hot-water bottle, or even such as

⁴ Applicants appear to concede the above: see applicant ion "production lines", pages 4-6 and 7-8.

one finds in a zip-lock bag common in supermarkets. Containers can be expansible by the nature of the material used, whether they are made of metal, molded plastic or some other material.

Plastic may be preferred over rigid metal containers because plastic containers often weigh less than their metal counterparts. Lower weight of a container translates into reduced shipment and delivery costs. In addition, a container that is partially filled weighs less than if it were fully filled with a liquid coating. Reduction in weight also lowers shipping and delivery charges. For example, a 10-thousand gallon container of liquid coating product would normally require thicker walls than the walls of a container designed to transport a 1-ounce, 1-gallon or 55-gallon volume of the same liquid coating product. While bulk-shipments may reduce shipping costs, shipping is often based on weight, including the weight of individual metal, glass or plastic containers. Thick, rigid metal containers may weigh more and may cost more to ship than plastic equivalents. Similarly, thicker plastic containers may weigh more and cost more to ship than thinner plastic containers. Collapsible plastic containers would most likely weigh less than rigid walled plastic containers, and may cost less to deliver.

Distributor Roles does not specifically disclose ordering, production, packaging and delivery of liquid coating products. *Lowe's Superstore* discloses that home improvement retailers (e.g., HOME DEPOT, LOWE's) sell over 40,000 related home improvement products, including special order, custom products such as custom paints.

Therefore, it *would have* been obvious to one of ordinary skill in the art at the time the invention was made to disclose ordering, production, packaging and delivery of

liquid coatings among other types of products. One of ordinary skill in the art in the art at the time the invention was made *would have* been motivated to include ordering, production, packaging and delivery of liquid coatings among other types of products for the obvious reason that liquid coatings are another type of product that is in great demand by customers for home improvements and for home building.

Liquid coatings are often delivered to construction sites and customer addresses (drop-shipments). Very large orders may be shipped to other manufacturers (for example General Motors may order several rail cars of customized liquid coating product for a run of several thousand cars). Builders of apartment buildings may also request large orders deliverable via railroad, trucks, and other shipment methods.

Distributors may benefit from becoming electronic clearinghouses, as taught by *Distributor Roles*. Distributors would cut their operational costs since they would not have to receive, store and ship product orders. Distributors would not have to maintain an inventory of containerized, fixed colors. Distributors can provide their customers with economic benefits associated with of just-in-time inventory, which reduces inventory costs to customers.

Distributor Roles and *Lowe's Superstore* do not specifically disclose that liquid coating products may be containerized in rigid metal paint cans (as in claim 2), or that rigid metal paint cans may be partially filled (as in claim 3), or that liquid coating products may be containerized in molded plastic expansible containers (claim 4) or that molded plastic expansible containers may possess a collar about an aperture which collar is gripped during operation of said production line (claim 6).

It was well known to those of ordinary skill in the art at the time the invention was made that partial filling of a container produces savings at least in (a) manufacturing and (b) delivery. In manufacturing, manufacturers and distributors may save money when they acquired materials such as plastic and metal for their containerization and production lines. When production costs are lowered, manufacturers and distributors can charge less for their products and pass part of the savings to their customers, and still increase their profits. Lower production costs allows better use and allocation of scale production and allow for better utilization of natural resources. Better natural resource use and allocation also permits less contamination and provides everyone on the planet with a healthier environment.

In delivery, manufacturers and distributors can also save money in shipping and delivery. Identical volumes of a liquid would weigh less when they are placed in plastic rather than in metal containers. Liquid coatings in plastic containers cost less to deliver to a customer site than in metal containers. One would want to partially fill a plastic or metal container because doing so cuts down the cost of shipping and delivery, thereby reducing the overall price to a consumer. Where liquid coating is in an expandible container, the container will take up less storage space. This translates into reduced storage costs for the party placing the order.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to disclose that liquid coating products may be held in rigid metal paint cans which may be partially filled and in molded plastic expandible

containers which possess a collar about an aperture whose collar is gripped during operation of the production line.

One of ordinary skill in the art at the time the invention was made would have been motivated to disclose that liquid product may be containerized in rigid metal paint cans, and in molded plastic expansible containers, that the rigid metal paint cans may be partially filled and that the expansible containers possess a collar about an aperture whose collar is gripped during operation of the production line for the obvious reason manufacturers and customers want to reduce the costs incurred to engage in business. Cost savings translates into greater profit for manufacturers; costs savings also reduces prices that customers pay. The savings can occur in several places, including (a) manufacturing and (b) delivery, as shown above.

One of ordinary skill in the art at the time the invention was made would have known that placing a liquid into a molded plastic container might be done by filling the container through an aperture that is simultaneously held by a gripping mechanism. Doing so assures that the bulk of the liquid is properly transferred into a container, thereby eliminating waste of the liquid and preventing the liquid from spilling and interfering with the operation of production machinery. Additionally, gripping a container by a collar facilitates placement of a sealing top on the container.

Claims 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Distributor Roles* in view of *Lowe's Superstore*.

As per claims 7-10, *Distributor Roles* and *Lowe's Superstore* disclose identifying products for assembly and delivery (page 3, paragraph 1, describing that orders may be

taken electronically and shipped directly from manufacturers to consumers; page 3, paragraph 4, describing drop-shipment; page 4, Delivering the Goods). Shipment and delivery often require information of where to deliver a package (or a container, for liquid home improvement products).

Distributor Roles and *Lowe's Superstore* disclose customer ordering, shipping and delivery of home improvement products, including liquids such as paints. Shipping and delivery requires identifying packages with customer order information such as at least customer name, street address, city, zip code. Packages often have product information such as at least supplier inventory code(s) to identify the product, type of product and other attributes of a product. Other data may include delivery date, quantity of a product, number of packages in a shipment. The information is often printed on adhesive labels that are attached on packages. The label may contain information in human-readable print format. The label may also contain information printed as bar code, for scanning.

Shipping and delivery requires the identification of *to* and *from* information on a package. Where many shipments take place, it is most cost effective to use labels and attach them to a package. Labels often contain customer order information such as the contents of a package, the delivery destination and name of recipient. Labels often include bar codes that can be scanned. Suppliers place various types of information on labels to track inventory and to provide information to delivery services to get a product to its destination. (See also rejection of claims 7-10 in First Office Action). A package may be impossible to deliver without proper identification on the package.

Distributor Roles and *Lowe's Superstore* do not provide details concerning how packages and shipments are specifically labeled.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply product identification features to shipments of liquid coating home improvement products. One of ordinary skill in the art at the time the invention was made would have been motivated to apply product identification features to shipments of liquid coating home improvement products for the obvious reason that doing so allows containers of liquid coating home improvement products to become part of the normal stream of commerce. While detailed information varies according to product, in the case of liquid coating products, the label may include the name of the color in the containers.

Containers of liquid coatings often have their contents printed on labels. For liquids coatings such as stains or polyurethanes, the contents might be described as glossy or semi-gloss cherry color. Paints are another type of liquid coating. Paint containers might have printed labels with name of a color, as well as other features (e.g., flat, glossy, latex, water-based, etc.). In addition, it is common to see an actual color displayed on a container, to further avoid confusion. The printed label enables human identification of contents of a container. Proper identification of a package and its contents is critical for reducing errors, cutting costs and increasing customer satisfaction. Increased customer satisfaction often results in increased purchases and increased profits for entities in a supply chain such as above.

Claims 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Distributor Roles* in view of *Lowe's Superstore* and disclosed *prior art*.

As per Claims 11-16 *Distributor Roles* and *Lowe's Superstore* disclose that home improvement products, including paints, may be sold from a manufacturer to distributor(s) as well as to customer(s). Delivery can be to a contractor at a job site of to customers (*Distributor Roles* page 3, paragraph 1, describing that orders may be taken electronically and shipped directly from manufacturers to consumers; page 3, paragraph 4, describing drop-shipments; page 4, Delivering the Goods).

Distributor Roles and *Lowe's Superstore* do not provide details of operating a production site that fills rigid metal paint cans or expansible containers made out of molded plastic. *Distributor Roles* and *Lowe's Superstore* do not state that operating a production line may include addition of blended liquid coating base to an empty container (claim 11), or that blended liquid coating base may be obtained from a manufacturer in large containers ranging in volume from fifty-five gallon barrels through railroad tank cars inclusive of 1,000 liter totes (claim 12), or that one may use a pipeline to transfer liquid coating base from large containers to a tank from which the liquid coating base is dispensed (claim 13) or the method would include a step to identify the type of liquid coating base added upon the container (claim 14), or that that operation of a liquid coating production line includes the addition of colorant to a blended liquid coating-base (claim 15), or that the method would include a step of identifying the name of the color resulting from the colorant added upon the container (claim 16).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to disclose that manufacturers may ship liquid home improvement products directly to distributors and customers in 55-gallon barrels or railroad tank cars (as in claim 12). It would have been obvious to one of ordinary skill in the art at the time the invention was made to describe that the liquid product is transferred from a manufacturer's container to a tank for dispensing said liquid (as in claim 13). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include steps for identifying the type of liquid coating base added upon the container (claim 14), adding colorant to the blended liquid coating base (claim 15) and identifying the resulting color (claim 16).

One of ordinary skill in the art at the time the invention was made would have been motivated to disclose that manufacturers may ship liquid home improvement products directly to distributors and customers in 55-gallon barrels or railroad tank cars (as in claim 12) for the obvious reason that bulk purchases from a manufacturer is known to lower the overall costs of producing goods. By achieving economies of scale, manufacturers and distributors save money. Savings may be passed in a distribution chain, benefiting all parties and creating jobs and financial opportunities.

One of ordinary skill in the art at the time the invention was made would have been motivated to disclose that liquid products may be transferred from a manufacturer's container to a tank for dispensing said liquid (as in claim 13) for the obvious reason that raw materials must be integrated into a manufacturing process and a first step of doing so includes identifying and using the materials received from a

manufacturer. While one can always integrate outside containers into a manufacturing process, it may be necessary to first transfer the product into the specific product line. While terms of product delivery will vary by industry, offloading a railroad tank, for example, could mean that a railroad tank may be leased only for a short length of time, cutting down overall production costs to everyone involved. This savings can be used to improve marketing, or may be passed directly to customers, or may be kept as profit by entities along a supply chain.

Claims 17-20 and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Distributor Roles* in view of *Lowe's Superstore*.

As per claims 17-20, and 23-25, *Distributor Roles* discloses various ways for customers to connect to remote suppliers and place product orders into customer order subsystems; *Lowe's Superstore* discloses liquid coatings such as paint. In *Distributor Roles*, see at least Connectivity to the Internet, pages 5-6, via hand-held portables such as cell-phones (as in claim 17), PDA's and other types of Internet devices (as in claims 23, 24). See also at least page 2, paragraphs 8, 9 describing that customers may use an Internet-wired kiosk (i.e., an example of a dedicated terminal with Internet access only to a web site maintained by the remote supplier, as in claim 25), universal datatone for telephone, fax (as in claim 20, see at least page 1, paragraph 3, and page 3, paragraph 11), data, smart phones, Web-TV. *Distributor Roles* discloses ordering via telecommunications (as in claim 17), via telephones connected to a public telephone exchange (as in claim 18) in disclosing the use of the public telephone system.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of *Distributor Roles* and Lowe's Superstore and disclose electronic ordering for liquid coatings. One of ordinary skill in the art at the time the invention was made would have been motivated to combine the teachings of *Distributor Roles* and Lowe's Superstore and disclose electronic ordering for liquid coatings for the obvious reason that liquid coatings are an integral part of home improvement products. Using existing order systems for another type of home improvement product builds on already proven systems and technologies. Suppliers can continue to use reliable human-computer interfaces; customers in turn can benefit since they *do not* have to connect to different systems for different home improvement products. Suppliers can save money, and customers may purchase other types of products that may be needed at home.

Claims 21, 22, 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Distributor Roles* in view of *Lowe's Superstore*.

As per claims 21, 22, 26-28, *Distributor Roles* discloses an interactive network of clients and server machines in the form of customer order subsystems, production subsystems over the Internet. *Distributor Roles* describes client/server network architecture with multiple nodes.⁵

⁵ client server architecture is a network architecture in which each computer or process on the network is either a client or a server. Servers are powerful computers or processes dedicated to managing disk drives, printers or network traffic. Clients are PCs or workstations on which users run applications. Clients rely on servers for resources, such as files, devices and even processing power. (Definition of Client/Server Architecture, Computer and Internet Dictionary, Random House/Websters, third edition).

Distributor Roles and *Lowe's Superstore* do not specify configurations for distributing a production and a customer order subsystems are distributed across the various networks that make up the Internet. *Distributor Roles* and *Lowe's Superstore* disclose the claimed configurations of this application except for explicit disclosure as to physical and logical location of each node on a network.

Each computer or process on the network is either a client or a server. The word server may refer to a physical machine or the software that performs server tasks. In a network, one may place one or more server systems or subsystems on the same or different physical computer. The configuration takes into consideration different needs of a merchant's system as a whole. On a system with heavy Internet volume, for example, it might make sense to have separate logical or physical machines to handle Internet traffic. One does this to decrease the amount of time users must wait for a merchant's response. Merchants lose sales and money when users are forced to wait. Users tend to avoid sites that make them wait.

A merchant's site might have a node to handle its customer orders. The node might contain one or more logical or physical machines that process customer requests via application programs. The same merchant might have a separate node to handle database activity, since I/O operations are relatively slow. A merchant may use names that relate to a server's function. For example, a subsystem that handles user requests might be called a front-end system, a customer node, a merchant node, a customer application system, or a merchant node. Similarly, a merchant might use the term customer database system to refer to the node that access information from a customer

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database and prepare it for a production subsystem. The names applied to systems and sub-systems tend to be descriptive, easily recognizable to humans. The names *do not* affect what the machines do.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine Distributor Roles, Lowe's Superstore and knowledge generally available concerning networks to disclose placing a node in any configuration on a network.

One having ordinary skill in the art at the time the invention was made would have been motivated to combine Distributor Roles, Lowe's Superstore and knowledge generally available concerning networks to disclose placing a node in any configuration on a network for the obvious reason that it is important to balance loads on a network and permit customers to place orders without delays. Merchants lose sales and money when users are forced to wait. Users tend to avoid sites that make them wait.

Claims 29-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Distributor Roles in view of Lowe's Superstore and further in view of an article entitled "Welcome Homes on the Virginia Beach Tour – Visit a premier colonial revival-style home, painstakingly built and restored", (Colonial Restoration) by Ann Wright, published on 19 April 1998, Virginian – Pilot, Norfolk VA, downloaded from the Internet on 16 October 2002.

Distributor Roles and Lowe's Superstore disclose web sites that provide product information to assist customers in selecting home improvement products, including

liquid coating products (claim 29). On a web site, customers input information that defines the product sought (as in claim 31). It was well known to one of ordinary skill in the art at the time the invention was made that the type of digital data exchanged on the Internet may include text, images, sound, video, photograph and modeling data (as in claim 34). *Lowe's Superstore* discloses that customers may place special orders and may carry out computerized color matching.

Distributor Roles and Lowe's Superstore do not specifically describe details such as identification of a plurality of particular, custom colors nor where assisting in the selection of a liquid coating product includes liquid based characteristics nor selection of liquid coating product appropriate to a given job as defined by information input by the customer, nor recommending a liquid coating base nor calculating volume for a given application as defined by customer input, nor that assistance in the selection of liquid coating product includes the suggestion of at least one particular, custom color based upon digital input by said customer, said digital input including but not limited to digital video input, digital photograph and digital solid modeling input.

Liquid coatings come in different colors. Customers' color tastes vary. Liquid coatings also have properties that allow them to perform better indoors or outdoors. Larger rooms and physical areas often require more paint than smaller spaces. The amount of water-based paint required for a child's bedroom, for example, is much less than the volume of a latex-based paint that one would need to paint the outside of a single-family home. It was well known at the time the invention was made that sites offered assistance to customers to place orders. For example, sites help in product

selection, color selection, calculation of volume required as determined by the size of the surface to be covered. Sites often help customers select a store.⁶

Colonial Restoration discloses paint customization and matching for historical restorations. Colonial Restoration describes the use of custom colors for formulas that are no longer in production (see at least page 2, last two paragraphs).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include plurality of custom colors, specific characteristics of liquid coating products according to job specifications, recommendation of liquid coating base, volume calculation per user input, or that customer input may include digital video, photos or digital solid modeling.

One of ordinary skill in the art at the time the invention was made would have been motivated to include plurality of custom colors (claim 29), specific characteristics (claim 30) of liquid coating products according to job specifications (claim 31), recommendation of liquid coating base (claim 32), volume calculation per user input (claim 33), or that customer input may include digital video, photograph or digital solid modeling (claim 34).for the obvious reason that these are normal considerations when selecting liquid coating product bases and colors. Customers may have different requirements.

For example, a mother who wishes to paint her child's room would have had different needs from an industrial customer who wishes to paint many apartments in a condominium complex. Similarly, architects and interior designers have different needs

⁶ Applicant also appears to concede this, as in page 4 of the specifications.

from customers who order liquid coating products to coat the bottom of a yacht, or to coat the outside of a train or the outside of a truck or bus. One of ordinary skill in the art at the time the invention was made would have known to include steps to facilitate customer selections and include requirement characteristics that would facilitate selection of custom colors, base, volume, among others. One of ordinary skill in the art at the time the invention was made also would have known that since customers have specific needs, a web site might also include means for a customer to input digital video, digital photograph as well as digital solid modeling.

For example, one of ordinary skill in the art at the time the invention was made would have known that Computer Aided Design and Computer Aided Manufacturing (CAD/CAM) systems have been widely used in industry for several decades. Thus, it would have been obvious to include similar technology in the design of web sites for selection of custom liquid coating products for home improvement and for other uses. By doing so, a manufacturer will increase customer satisfaction, resulting in additional sales and increased profits.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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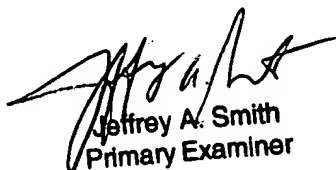
mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Zurita whose telephone number is 703-605-4966. The examiner can normally be reached on 8:30 am to 5:00 pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

JZ
James Zurita
Patent Examiner
Art Unit 3625
July 2, 2003


Jeffrey A. Smith
Primary Examiner